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Fifty-second session
Agenda item 9 (a)

FURTHER PROMOTION AND ENCOURAGEMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING THE QUESTION OF THE PROGRAMME AND METHODS OF WORK OF THE COMMISSION

ALTERNATIVE APPROACHES AND WAYS AND MEANS WITHIN THE UNITED NATIONS SYSTEM FOR IMPROVING THE EFFECTIVE ENJOYMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

Letter dated 10 April 1996 from the Permanent Representative of Singapore to the United Nations Office at Geneva, addressed to the Assistant Secretary-General for Human Rights

I have the honour to refer to the report of the Special Rapporteur on violence against women to the United Nations Commission on Human Rights (E/CN.4/1996/53). On page 23, paragraph 85, of the report, the Special Rapporteur has recounted the case of Flor Contemplacion. The Singapore Government rejects the inaccurate reporting in that paragraph.

The Special Rapporteur had suggested that the Flor Contemplacion case was a case typifying "domestic violence" by the employer and due to "discriminating policies and procedures" of the State. Neither of these claims was established by the facts and evidence of the case. Singapore enforces its laws impartially to Singaporeans and foreigners alike. Its judiciary system is open and transparent. All the facts and relevant documentation of the Contemplacion case were made public and are readily available for the scrutiny of the Special Rapporteur. The Singapore Government will be happy to provide the Special Rapporteur with the necessary information upon request. Regrettably, the Special Rapporteur did not deem it necessary to do so before submitting the report.

GE.96-12358 (E)

The facts of the Contemplacion case are not in dispute. Flor Contemplacion had murdered another Filipina, Della Maga, and a 4-year-old child, Nicholas Huang, on 4 May 1991. From the time of her arrest by the Singapore police until her petition for clemency to the President of Singapore four years later, Contemplacion did not deny that she had killed Della Maga and Nicholas Huang. Indeed, she voluntarily admitted to the two murders in the presence of a Philippine Embassy official. The so-called information or fresh evidence from another Filipina was conclusively investigated and proved to be untrue.

The forensic findings by Singapore's pathologists concerning the cause of death of Della Maga were challenged by some quarters in the Philippines. To resolve this, the Philippine and Singapore Governments established an independent Third Party Panel, comprising three renowned United States forensic experts selected by both Governments. Both Governments agreed to accept the findings of this Third Party Panel. After a thorough investigation, the Third Party Panel concluded that the relevant forensic findings by Singapore's pathologists were correct. The Philippine Government has accepted the conclusion of the Third Party Panel.

To ensure that the United Nations Commission on Human Rights is given the correct information, I have the honour to request that this letter be circulated as an official document of the fifty-second session of the Commission on Human Rights under the agenda item relating to the report to the Special Rapporteur contained in document E/CN.4/1996/53.

(Signed) K. KESAVAPANY
Ambassador
Permanent Representative

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COMMISSION ON HUMAN RIGHTS
Fifty-second session
Agenda item 10

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Letter dated 15 April 1996 from the Permanent Representative of Croatia to the United Nations Office at Geneva, addressed to the Chairman of the Commission on Human Rights

Herewith I have the honour to forward to you* the comments of the Government of the Republic of Croatia on the report by the United Nations Special Rapporteur on the situation of human rights in the territory of the former Yugoslavia (E/CN.4/1996/63 of 14 March 1996).

I should kindly like to ask you to distribute the said comments as an official document of the fifty-second session of the United Nations Commission on Human Rights.

(Signed): Neven MADEY
Ambassador
Permanent Representative

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* The annex is reproduced as received in the language of submission only.

GE.96-10897 (E)

ANNEX

1. The Croatian Government has very carefully considered the Report by the UN Special Rapporteur for Human Rights Ms. Elisabeth Rehn and asked the responsible ministries and Government offices to give their comments on the allegations in the said Report within their respectful competency.

2. The Croatian Government attaches great importance to the promotion of its system of implementation and protection of all civil rights and freedoms in Croatia. The Croatian Government has established the Co-ordination for Human Rights, headed by the Deputy Prime Minister, Dr. Ljerka Mintas Hodak, which cooperates with the Presidential Office, various ministries and government offices, non-governmental organizations concerned with human rights and other institutions, as well as with the Ombudsman's Office, numerous international organizations and the international community.

3. The Government's Co-ordination for Human Rights is starting to set up it's own commissions at county levels (Croatia is divided into 20 counties). Arrangements are also being made to establish county offices of the Ombudsman in every regional centre. Furthermore, the Government will form counselling services for human rights, working alongside judicial institutions, in every Croatian town from where such judicial institutions operate.

4. The Croatian Government has paid particular concern for human rights, through the installation of human right issues into nationwide educational programmes. An expert group has been set up consisting of the representatives of the Government, the Ministry of Education, principals of primary and secondary schools, and university Chancellors. These groups are already preparing a curriculum based on UN literature and other works by internationally recognized experts in the field of human rights. In this respect, Croatia will closely cooperate with UN institutions (UNICEF, UN Centre for Human Rights, etc.) and awaits technical assistance and advisory services as provided by the UN Technical Cooperation Branch of the said UN Centre for Human Rights.

5. For the last three years, the Croatian Government has established a close working relationship with the UN Field Office for Human Rights in Zagreb and has approved the recently opened UN Field Office in Erdut.

6. The following paragraphs are the Croatian Government's comments in response to the points raised by the Special Rapporteur in her report:

(A) FURTHER DEVELOPMENTS IN THE SO-CALLED "KRAINA"

7. The Croatian Government is paying special attention to the implementation of legal measures within its responsibility, to ensure the exercise of human rights and freedoms, in particular, in establishing conditions of maximum safety, public order and peace in recently liberated areas to enable overall normalization of life and the return of displaced persons in these parts.

To this end, immediately after the liberation of the former Sectors North and South and according to a previously elaborated plan, the Ministry of Interior deployed in these areas, the requisite number of police officers specially trained for carrying out all such security and administrative tasks.

It should be reiterated that the Croatian Government has responded to all reported or discovered cases of punishable acts, by taking legal measures to identify and prosecute the perpetrators in question.

Right to life

8. (para. 65 of the Report)

Concerning the murder of a Serb couple in the village of Jezerce near Plitvice on 26 February 1996, the police have caught the perpetrators and brought them before the responsible investigative authority.

With regard to the two separate murder cases of two elderly women in late January 1996 in the villages of Bilišani near Obrovac, (victim: Milica Olujić, born in 1911) and Ljubović near Gračac (victim: Marija Žutić, born in 1938), these have not been clarified to date, consequently the police are taking further action to detect the perpetrators involved.

9. (para. 66 of the Report)

Following the combined military/police operation "Storm", the police recorded 57 murder cases up to 28 February 1996, of which 33 cases have been resolved and 24 perpetrators have been reported to the responsible judicial authorities. As to the remaining unresolved cases, the police are taking intensive measures to identify the perpetrators in question.

10. (para. 67 of the Report)

Regretfully, the investigation of the killing of five civilians in the village of Grubori on 25 August 1995, has not yielded any results so far, consequently, further investigative measures are being taken to shed light on this serious crime. As stated in earlier documentation, the criminal police arrived at the scene as soon as these murders were reported, and identified all five victims.

It was not possible to inform the victims' families of the respective deaths, as most of the local Serbian community had fled from the liberated under the influence of their self-styled civil and military leaders, therefore, the victims were buried in Knin cemetery in accordance with the Geneva Conventions and current regulations.

It should be noted that the Ministry of Interior has in its possession, basic data as to the location of discovery and burial of all identified and unidentified bodies found after Operation "Storm".

11. In the combined military/police operation "Storm", intended to liberate the occupied areas of Croatia, all members of the armed forces were placed under strict orders by their Supreme Commander to respect human rights.

The legal system of the Republic of Croatia also operates in the liberated areas.

The Croatian armed forces have taken efficient measures to prosecute any punishable acts committed by their members. Thus, criminal charges have been brought against some members of the Croatian armed forces in which proceedings have reached various stages.

The right to property

12. (para. 68 of the Report)

Having reviewed the case alleged in the Report of a theft reported by an old woman and her daughter in Kistanje on 1 December 1995, the police have found that at that given time, no such incident was reported by anybody from Kistanje. During an additional field investigation on 2 April 1996, no inhabitant of Kistanje could confirm these allegations.

Concerning the other incident of 9 February 1996 in Biskupija near Knin, the police interviewed at the station, several persons found to be extracting construction material from an abandoned house. They were questioned and charges were brought against them.

In the alleged case of the looting of a Serb woman's property in the village of Ervenik, the police have no knowledge thereof, since no such incident was reported to them.

As for the opinion stated in the Report that "there is little evidence of reinforced police presence in the former sectors", it should be noted that immediately following Operation "Storm", intensified police patrols were deployed throughout the area in an attempt to prevent any such criminal behaviour.

13. (para. 69 of the Report)

From the completion of the military and police operations until 1 April 1996, a total of 893 cases have been recorded in respect of partially/totally destroyed houses resulting from arson attacks or the planting of explosives.

It should be pointed out that observations made during criminal investigations of these cases, confirmed that these were incidents of the deliberate destruction of abandoned houses.

So far the police have solved 39 of these cases and brought charges against 39 perpetrators.

As for the cases of grand larceny in the liberated areas, by 18 March 1996 the police recorded 2,174 acts of which 1,441 have been clarified and charges brought against 2,008 perpetrators.

14. (para. 70 of the Report)

Between August 1995 and February 1996 a total of 1,782.4 tons of relief supplies were transported by the Government Office for Displaced Persons and Refugees to those areas liberated in Operation "Storm". All these humanitarian supplies have been distributed regardless of the nationality of the beneficiaries.

For elderly, invalid and abandoned persons two reception centres (Knin and Petrinja) have been opened and additional centres are about to be set up. For all the needy in these areas, a permanent humanitarian campaign "Save the Life" has been organized by the Croatian authorities (the Ministry of Labour and Welfare, Ministry of Health and Government Office for Displaced Persons and Refugees in conjunction with their local and regional services), jointly with domestic and foreign humanitarian organizations, whose teams are touring the area on a daily basis bringing relief supplies to the needy persons and helping them (Croatian Red Cross, International Federation of the Red Cross and Red Crescent Societies, etc.). Assistance is also provided to those requiring identity documents and other legal assistance. Many of these persons receive humanitarian and financial aid direct to their homes, without the need to seek assistance from local offices.

15. The Ministry of Labour and Welfare continues to take regular measures to protect the elderly and the sick in the liberated areas of the former sectors West, North and South. Emergency measures (disbursement of "one-off" allowances) were taken immediately after the completion of operations "Flash" (May 1995) and "Storm" (August 1995) and were continued within the "Save the Life" campaign, initiated in November 1995. The Agreement on Humanitarian Cooperation was signed between the Ministry of Labour and Social Welfare of the Government of the Republic of Croatia and the International Federation of Red Cross and Red Crescent Societies Delegation in Croatia (27 November 1995), which provided for the accommodation and care of 200 elderly and abandoned persons at a retirement home in Petrinja and at Knin Hospital.

Financial assistance amounting to 200 Kunas per household was provided on three occasions. In Western Slavonia financial assistance was received by 2,522 households comprising 6,050 persons and in Banovina, Kordun, Lika and Northern Dalmatia by 4,934 households or 7,135 persons, making a total of 7,456 households with 13,185 family members in the total amount of 2,006,222 Kunas.

After the third payment of financial assistance (December 1995), the beneficiaries have been included in the regular welfare system operating within the framework of the Welfare Act and pertaining by-laws, provided that they meet the requirements as defined in these current regulations.

In Western Slavonia the Welfare Centre was restored in Pakrac and its Nova Gradiška branch opened in Okučani.

In Banovina, Kordun, Lika and Northern Dalmatia, immediately after liberation, welfare centres were restored in Glina, Petrinja, Knin, Drniš and Benkovac and new such centres opened in Hrvatska Kostajnica, Slunj, Topusko, with branches in Vojnić, Vrginmost, Dvor, Korenica, Obrovac, Gračac and Donji Lapac.

In cooperation with local authorities, these welfare centres and their branches have been given properly adapted working premises with the necessary equipment (office furniture, telephone and telefax lines, cars, etc.). For this purpose, the Central Welfare Fund has provided 750,000 Kunas. The main problem of the newly established welfare centres, however, is a lack of professional and lay staff. As a result, the Ministry of Labour and Welfare has come up with a proposal to the Croatian Government to employ the requisite number of persons.

The main task of the "Save the Life" campaign was to precisely establish the number, age, proprietorship, health status and ethnic composition of abandoned people for in order to accommodate them and care for them in adequate welfare and health institutions. A total of 9,773 persons have thus been recorded. All of those willing to sign a statement to this effect, have been placed in institutions, whereas 500 refused such accommodation, even though they were as assessed by social workers as in need of such. For those who were not accommodated in institutions, arrangements during winter were made for the provision of humanitarian aid in clothes, footwear, food, fuel and toiletries. Aid was organized in cooperation with international organizations and the Croatian Red Cross.

Welfare institutions for the elderly and sick throughout Croatia have taken in 148 persons. In addition, 63 persons have been accommodated in a branch of the Zadar Retirement Home located on the second floor of the Knin Hospital, as approved by the Ministry of Health and the Zadar-Knin County authorities. In the "Otok mladosti" refugee centre of Obonjan, 36 persons, mainly from the Šibenik County, have been accommodated. The renovated retirement home in Petrinja accommodates 90 persons and the old hospital building in Petrinja, 42 persons. Therefore, a total of 379 documented persons are accommodated in welfare institutions.

Based on data provided, preparations are being made for interested international and national bodies, for the implementation of optimum protective measures for elderly and abandoned persons in the liberated areas. Steps have also been taken for the listed persons to obtain Croatian identity documents, necessary for the enjoyment of welfare rights under Croatian legislation.

16. With regard to the issuing of identity documents to citizens living in the liberated areas, the Ministry of the Interior organised through police stations in these areas, all its administrative tasks but due to technical reasons, it was unfeasible to issue initially, identity documents from every police station.

Based on applications submitted, by 18 March 1996, 4,192 orders were issued for entry into the register of citizens, out of 6,525 applications for Croatian citizenship, 15,580 identity cards were issued out of 16,612 applications, and 5,394 passports were issued out of 6,357 applications.

As reported by the Ministry for Administration, offices for vital statistics within the liberated areas have issued 13,143 certificates of citizenship from 14,002 applications.

This Ministry has done its best to issue identity documents so as to enable the people in liberated areas to exercise their civil rights. As soon as the police and other civil authorities entered the liberated areas, the people there, were regularly informed through mass media on matters concerning the issuing of necessary identity documentation.

17. The identity documents being issued by the Ministry for Administration and their county offices are excerpts and certificates from state registers of vital statistics (births, marriages, and deaths), including the certificates of citizenship issued from the register of citizens. These documents are issued by registry offices acting as sections of county administration offices, in compliance with the actual entries in the registers.

Out of a total of 752 registry offices in Croatia, 183 of these were inaccessible during the war. 70 offices are still inaccessible in the area of Osijek-Baranya and Vukovar-Sriem Counties.

In the former sectors North and South, 105 registry offices were inaccessible. After their liberation some of these offices were found completely destroyed, in 30 registry offices state registers and registers of citizens were missing, whereas in two registry offices only the registers of citizens were missing. Recovered registers include those partially damaged and thus renders the issuing of official documents impossible in some cases.

The citizens whose entries are in missing or destroyed state registers, are advised to renew the registration procedure or produce alternative evidence as to personal identity, as required by law.

In cases of destroyed registers of citizens, there is no renewed registration procedure. Citizens in these cases are referred to the competent police authorities for the purpose of establishing the fact of citizenship.

It is only under the afore-mentioned circumstances that the issue of identity documents require a certain period of time, but if records are available, these documents are then issued in accordance with the procedure prescribed for the issue of certificates.

18. (para. 71 of the Report)

The dismissal of workers from enterprises in Western Slavonia (an area badly damaged during the war, with many displaced persons and refugees and returnees currently being partly cared for by the Government Office for Displaced Persons and Refugees) was due to the poor state of the economy, as many as 17% of the Croatian citizens of working age are unemployed, some for several years. Hence, it is not a question of discrimination on ethnic grounds. At the same time, after the partial demobilization of Croatian servicemen, about 40,000 people have become unemployed, the majority being former displaced persons, and now returnees to the liberated areas. Generally, the acute problem in the liberated and war-effected is unemployment and slow economic recovery. This impact of this problem is felt by all Croatian citizens and cannot be pinpointed to a particular ethnic background.

19. The Labour Office has set up new local services and branches in the liberated areas to help people there and to compile records of those unemployed. A total of 3,977 people have been registered as unemployed in liberated areas and in terms of rights and obligations, they are equal to other unemployed citizens of Croatia.

The National Fund for Retirement Pensions and Disability Allowance for Croatian employees has assisted the people in the liberated areas by resuming its activities and dealing with their applications for continued pension and disability benefits. Up to 28 February 1996, a total of 3,940 applications to this effect have been received and resolved (3,472 or 88%), whereas the procedure for the rest (468 or 12%) is underway. Those applications which have been accepted have been receiving their pensions since 1 May 1995 (Western Slavonia, earlier liberated), and since 1 August 1995 (Banovina, Kordun, Lika, Northern Dalmatia).

Detention issues

20. (para. 72 of the Report)

In connection with the complaints concerning the criminal defence proceedings of the people detained after Operation "Storm", the Ministry of Justice issued instructions for the respective courts to meet the demands by the UN personnel, particularly with regard to following the course of natural justice and visiting prisons, in accordance with our regulations.

In its circular letters, the Ministry of Justice also instructed the courts, before which the abovementioned proceedings were conducted, to proceed as quickly as possible, which - considering the workload - they did.

Since we have noticed that a large number of complaints was due to the lack of knowledge of our regulations, we find it necessary to point out the following:

After the suspect has been brought before the investigative judge, he/she shall, in the sense of the provisions of the Criminal Procedure Act, be informed of the allegations against him or her, as well as being informed of their legal rights, particularly the right to a defence counsel at the first stage of questioning. They may, but are not obliged, to exercise this right. However, if for a particular offence carries a prison term of 10 or more years, the accused shall be appointed a defence counsel ex officio in compliance with the provisions of the Criminal Procedure Act.

Special attention should be given to differentiating between the legal principle of "obligatory defence" and appointing a defence counsel "ex officio". The provision of Article 65 of the Criminal Procedure Act provides and prescribes the legal principle of "obligatory defence" ("If the accused is mute, deaf, or incapable of competently defending him or herself, or if the proceedings are conducted with regard to a criminal offence for which the pronounced sentence carries a prison term of 20 years, pronounced, the accused must have a defence counsel already at the first interview.") The provision of item 2 of the quoted paragraph determines the following: "When the accusation has been brought forward with regard to the criminal offence for which, in conformity with law a sentence to a prison term of 10 years or more may be pronounced, the accused must have a defence counsel at the time of serving the accusation."

Thus, the "obligatory defence" is one that must be provided in the case mentioned in Article 65, para 1 (such defence may already be provided during the investigation, under the abovementioned conditions), whereas the "ex officio defence" is only possible after the accusation has been brought, if in conformity with law a sentence to a prison term of 10 years or more may be pronounced in the respective case.

Since the provisions of the Criminal Procedure Act are clear and our courts are obliged to apply them, it is indisputable that the court proceedings were conducted in conformity with law.

All reports by the UN officials after the "Storm" military and police operation raises the issue of the difference between their and our information with regard to the number of murder cases and the scope of property damage, as well as the issue of insufficient number of proceedings for arson. The reasons for this is that the UN personnel do not differentiate between the persons killed during the operation due to combat action and the persons killed in the perpetration of criminal offences; the military and police actions also gave rise to a substantial destruction of property in the combat areas.

Return of the Croatian Serb refugees

21. (para. 73 of the Report)

By 28 March 1996 the Government Office for Refugees and Displaced Persons received data on 14,000 people who left the Republic of Croatia during the "Flash" and "Storm" military and police operations and subsequently expressed their wish to return. Of this number, 6,351 applications have been processed, of whom 3,693 have been granted applications for return, while the remaining 2,658 applications are still being processed. According to our information, another 10,000 persons have returned under other titles.

22. The Parliament of the Republic of Croatia passed the Act on the Amendment of the Act on Temporary Taking over and Managing Specific Property (17 January 1996), by which the time limit for the return of the persons who abandoned their property has been lifted.

Under the abovementioned Act, if the owner of a property returns to the Republic of Croatia he is entitled to use his or her property. If in such property displaced persons or refugees have been temporarily accommodated and the owner requests the return of the property into his or her possession, the Commission will repeal the ruling by which the property was handed over to displaced persons or refugees for their temporary use. The displaced persons and refugees shall reach an agreement with the Commission on guarding the respective house, outbuildings and chattels.

Legal issues

23. (paras. 75 and 76 of the Report)

With regard to the establishment of the Provisional Human Rights Court we hereby inform you that the Council of Europe, at the invitation of the working group drafting the bill on the establishment of the Provisional Human Rights Court, sent its experts, and working sessions were held in February and March 1996. In the last session, attended by the legal experts of the Venice Commission, as experts who specialized in constitutional legal matters, the conclusion reached was that the establishment of a such tribunal under the actual circumstances would be unnecessary. Since in the Republic of Croatia there is the Constitutional Court as the court of the last resort to protect human rights, and since at the same time the Republic of Croatia is expected to be admitted to the membership of the Council of Europe soon (which includes the jurisdiction of the European Human Rights Court), the legal experts concluded that through the aforesaid human rights will be more than protected in the Republic of Croatia and that other legal protection mechanisms will fully protect human rights in the Republic of Croatia (on which they will submit a report in writing). The ratification of the Protocol to the International Pact on the Civil and Political Rights has also been underscored again together with the individual right to complaint about human rights violations to the UN Human Rights Committee.

Illegal and Forcible Evictions

24. (para. 77 of the Report)

In regards to cases involving evictions and police actions, the Ministry of the Interior, at the request by courts and other authorised bodies, enforces their final judgement and decision. The Ministry is obliged to render its assistance particularly in cases when the execution of such decisions is violently resisted or where such resistance may reasonably be expected. Therefore, such assistance is only rendered in the enforcement of the decisions by courts and other authorised bodies which have already decided on someone's right.

In cases until now, where members of the Ministry of the Interior have acted in evictions, no force was used nor was anybodies rights and freedoms were violated.

25.

The Ministry of Defence, in accordance with the current regulations of the Republic of Croatia, in cases where a flat administered by the Ministry of Defence is illegally moved into, the Ministry of Defence initiates an eviction procedure through the attorney of the Republic of Croatia, that is, the Croatian Public Prosecutor's Office. This procedure is conducted before a regular court or an administrative body, depending on the jurisdiction. The eviction is then carried out on the basis of a final court ruling or decision of the administrative body in accordance with the current regulations. One should also take into account the Decision of the Croatian Constitutional Court that the Decree on the Ban on the Disposal of Real Estate on the Territory of the Republic of Croatia ("Narodne Novine", No. 36/91) is not in contravention of the Croatian Constitution.

In regards to the issuing of temporary decisions on the use of flats by the Housing Commission of the Ministry of Defence, we point out that these decisions were adopted by the Commission for the Temporary Use of Flats, established in Zagreb in accordance with the Law on the Temporary Use of Flats ("Narodne Novine", No. 66/91). The Commission is an independent body and acts independently of the Ministry of Defence. Under the Law it had a direct authority to assign temporary use flats owned by the Republic of Croatia, which were taken over under the Decree on Transferring the Ownership of the Assets of JNA and SSNO on the Territory of the Republic of Croatia to the Republic of Croatia ("Narodne Novine", No. 52/91).

The government's decision on Authorizing the Ministry of Defence to Administer Flats, Garages and Business Premises Owned by the Republic of Croatia ("Narodne Novine", No. 56/92), has authorised the Ministry of Defence to administer these flats. Under point II and III of this Decision, the Minister for Defence has established the Housing Commission of the Ministry of Defence and adopted the Regulations on Administering the Housing Buildings Owned by the Republic of Croatia and Administered by the Ministry of Defence.

All decisions on the use of flats were adopted under this criteria in accordance with the procedure prescribed by the aforementioned Law and the defined priorities, observing the relevant provisions of the Housing Law.

26. (para. 78 of the Report)

The case which occurred in Split on 10 October 1995 has been fully examined and filed for further procedure by a specialised public attorney.

27. (para. 80 of the Report)

All applications made by the competent court in regards to a final decision are made so that the decision are encompassed by law and in exceptional cases, a final decision may be forgone.

Kupljensko

28. (para. 84 of the Report)

About 4,500 people are still in the Kupljensko camp. The living conditions in the camp are difficult, but they are getting better due to the efforts taken in cooperation with the international community. Basic health care is provided in the camp, such as surgery, dentist, pediatrician and maternity room, while serious patients are treated in Croatian hospitals. The existing plumbing has been expanded. From August 1995 until the end of March 1996 almost 9,000 tons of humanitarian aid have been delivered to the camp.

The total of 17,000 inhabitants of Velika Kladuša have returned home (approximately 13,000 from Kupljensko and approximately 4,000 from Turanj, last year). The Office, in cooperation with UNHCR and the competent government agencies in the Republic of Bosnia and Herzegovina, are negotiating the return of about 2,000 persons to the region of Velika Kladuša. The Office is preparing the accommodation for approximately 2,500 persons (soldiers and their families) in existing facilities in Croatia.

29.

The return of refugees has been accelerated by the signing of the protocol between Turkey, Bosnia and Herzegovina and Croatia on the participation of a joint police force for the organized and safe return.

30. (para. 85 of the Report)

The security in the camp was threatened: there have been three cases of murder, several cases of rape, several cases of inflicting minor or serious injuries in fights, unauthorized trade and hindering a voluntary departure from the camp for the purpose of returning to Bosnia and Herzegovina, and attacks against policemen in the camp by firearms or explosives. Therefore, the police were obliged to take appropriate preventive and repressive measures, in cooperation with the competent inspectorates of other ministries, to reestablish the security in the camp.

The action was conducted on 1 February, in accordance with legal powers, without the use of coercion or the abuse of authority. Members of UNHCR were informed about its purpose, which they approved it and expressed their appreciation for the efficient cooperation with the action command.

31.

During the action 69 refugees were brought to the police station, of which 21 were returned to the refugee camp after the criminal investigation was complete.

Two people were brought before the investigative judge of the County Court in Sisak, on founded suspicion of having committed the crime of unauthorized possession of arms and explosives. 46 people were brought before the municipal magistrate of the County of Karlovac, under founded suspicion of having committed offenses from the Aliens Act and certain offenses within the competence of inspection services of the Ministry of Economy.

These people were provided with appropriate accommodation and food during the crinimal investigation or mandatory proceedings before the competent courts, and the staff of the Red Cross and UNHCR were able to communicate with them.

32.

We point out that these people were arrested after numerous serious crimes were committed in the camp, including several cases of murder, rape and grand larceny. UNHCR requested the Croatian government several times to take appropriate measures to secure the order and security in the camp.

33. (para. 86 of the Report)

In March 1996, the refugees in Kupljensko finally agreed that some of them would return to the area of Velika Kladuša and the others would be accommodated in other refugee facilities in Croatia.

According to the recent talks between the representatives of Bosnia and Herzegovina, Croatia and UNHCR, the issue of Muslim refugees will soon be solved and the Kupljensko camp closed.

THE REGION OF EASTERN SLAVONIA, BARANJA AND WESTERN SIRMIUM (Chapter III of the Report)

34. (para. 94 of the Report)

Before the war there were 86,366 Croats, 67,567 Serbs, 12,954 Hungarians and 26,896 members of other ethnic groups living in the now occupied territory of Eastern Slavonia, Baranja and Western Sirmium. The total of 193,513 Non-Serbs were an absolute majority, i.e., 65% or 125,216. Of them 77,000 now live as displaced persons in Croatia and about 15,000 are either abroad or have not registered with the Office as displaced persons for personal reasons (8-10% of all displaced persons).

Between 1991 and 1 April 1996 not a single displaced person from Eastern Slavonia, Baranja or Western Sirmium returned home.

The figure of 80,000 Serbs who settled in this region after the "Flash" and "Storm" actions is exaggerated, as the total number of people who left the liberated area does not exceed 135,000 (100,000 civilians and 35,000 soldiers). However, of all the people who settled there after they left the free Croatian territory, only 46 (according to the Office data from 1 April 1996) applied to return to the free territory. Of these persons 10 have already obtained permission, while the other requests are still being solved.

35.

Under the Croatian estimate (Office of the Transitional Administration in Osijek), only between 80,000 and 100,000 persons live in the region of Eastern Slavonia, Baranja and Western Sirmium. This number includes non-Serbs who remained there (20,000). The number of settlers is certainly smaller than asserted by the Serbian side (the Croatian estimate is between 3 and 4 thousand settlers after the "Storm" action). It should be taken into account that under the 1991 Census 67,567 Serbs lived in the area and that the Serb population steadily emigrated to Serbia and other countries even before the "Flash" and the "Storm" actions, like it was the case in other formerly occupied territories (although to a lesser extent because they are not so close to Serbia).

The Serbian side asserts that more than 180,000 people lived in the occupied territory of Eastern Slavonia, Baranja and Western Sirmium, among which there are many settlers from other parts of Croatia.

According to UNTAES data, there are between 150,000 and 170,000 residents in those areas. This data is also recognized by Mrs. Rehn in her report, stating that the region is overpopulated (the population density is somewhat smaller than before the war according to the Serbian data as well). This data presents that the population density is almost the same as before the war, when 193,000 people lived there. This is absolutely wrong, given that there was a war in the region, that more that 80,000 people were driven away to other parts of Croatia or abroad, and that many places are torn down, so that it is not possible for many people to settle in the region.

36. (para. 95 of the Report)

According to the Croatian data, until the beginning of the "Flash" action about 21,000 non-Serbs (Croats, Hungarians) still lived in the region. Some of them were driven away after the police and military actions of liberating the occupied territories (e.g. 79 Croats from Bapska near Ilok, in May 1995). Living and security conditions deteriorated particularly after the "Storm" action, when a part of the Serbs who left other parts of the Republic of Croatia settled there, which is seen from the letters received by our Office. People constantly ask the Office to help the members of their families in this still occupied part of Croatia.

37.

The Government Office for Refugees and Displaced Persons does not operate under the ethnic principle and does not discriminate against refugees and displaced persons on the basis of their ethnic group or nationality.

At present Croatia cares for 179,628 displaced persons, 16,867 returnees and 185,753 refugees registered with our Office. Croats make 93.65% of all displaced persons, including the returnees to the liberated parts of Croatia, Serbs 2.46%, Hungarians 1.77% and others 2.12%. Croats make 72.88% of all refugees, Bosniaks 25.15%, Serbs 0.85% and others 1.11%.

Since the beginning of the refugee crisis in Croatia, the government has allocated 2 billion DM from its budget for the care of refugees and displaced persons, compared to the total international financial aid of 160.5 million DM received in the same period (humanitarian aid not included). For example, our current monthly cost of displaced persons and refugees (whose number is slightly smaller than last year) is the total of 10 million DM. At the same time, the programme of the financial aid of the UN High Commissioner for Refugees to the Croatian Government for the care of displaced persons and refugees envisages 11.5 million DM (8 million US$) for the whole 1996.

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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Letter dated 15 April 1996 from the Chargé d'affaires, a.i. of the Permanent Mission of the Federal Republic of Yugoslavia to the United Nations Office at Geneva addressed to the Chairman of the Commission on Human Rights

I have the honour to transmit*, enclosed herewith, "Comments of the Government of the Federal Republic of Yugoslavia on the report of Ms. Elisabeth Rehn, Special Rapporteur of the Commission on Human Rights on the situation of human rights in the territory of the former Yugoslavia" (E/CN.4/1996/63), and to request you kindly to circulate it as an official document of the fifty-second session of the Commission, under item 10.

(Signed) Miroslav MILOSEVIC
Counsellor
Chargé d'affaires, a.i.

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* The annex is reproduced as received, in the language of submission only.

Annex

COMMENTS OF THE GOVERNMENT OF THE FEDERAL REPUBLIC OF YUGOSLAVIA ON THE REPORT OF MS. ELISABETH REHN, SPECIAL RAPPORTEUR OF THE COMMISSION ON HUMAN RIGHTS, ON THE SITUATION OF HUMAN RIGHTS IN THE TERRITORY OF THE FORMER YUGOSLAVIA

1. The Government of the Federal Republic of Yugoslavia appreciates the efforts made by the Special Rapporteur to personally get acquainted with the situation of human rights in the territory of the former Yugoslavia, as well as her efforts that the conclusions, appraisals and recommendations made, be based on actual facts.

The Government attaches importance to the Special Rapporteur's satisfaction with the openness of and cooperation with the Federal Republic of Yugoslavia, expressed in her Reports. The Government of the Federal Republic of Yugoslavia is willing to continue providing assistance and support to the Special Rapporteur for carrying out the activities of protecting and promoting human rights in compliance with her mandate.

The Government of the Federal Republic of Yugoslavia is expecting that the future activities of the Special Rapporteur, particularly upon the setting up of the field Office in Belgrade, contribute to adequate appraisal of some as yet controversial and insufficiently known issues, since complete knowledge of the situation requires much more time and joint efforts.

With reference to the latest Report of the Special Rapporteur of the United Nations Commission on Human Rights on the state of human rights in the territory of the former Yugoslavia (E/CN.4/1996/63), the Government avails itself of this opportunity to comment some of the findings contained in paras 115-180, covering the situation of human rights in the Federal Republic of Yugoslavia.

2. The statement contained in para 136, whereby the Federal Republic of Yugoslavia has proclaimed itself the unique successor of the Socialist Federal Republic of Yugoslavia, is inaccurate. The position of the Federal Republic of Yugoslavia is that it represents the continuity of the international-legal entity of the Socialist Federal Republic of Yugoslavia, whereas the newly-founded states in that territory have seceded from the SFRY. This ruling has been reiterated on several occasion by the United Nations Office of Legal Affairs (ST/LEG/8).

The issue of the division of assets and debts has been on the Agenda of the Working Group on Succession Issues.

I Freedom of media

3. It is considered that, generally, the statement whereby the Federal Republic of Yugoslavia exercises "strong control" or any kind of monopoly over electronic and printed media (para 123) does not hold. All media in the FR of Yugoslavia are equal and the freedom of the press (media), guaranteed by the Constitution of the FR of Yugoslavia, is based on the Charter of the United Nations and the Universal Declaration of Human Rights. This right, dominated

by the principle of freedom, is restricted by the principle of responsibility. After all, Art. 29 of the Declaration provides that, in the exercise of this right, "(1) Everyone has duties to the community..."; "(2)...everyone shall be subject only to such limitations as are determined by law for the purpose of securing due recognition and respect for the rights and freedoms of others..."; and "(3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations."

4. The statement to the effect that only two laws regulate the media in the FR of Yugoslavia (para 124) is inaccurate. The federal laws regulating the matter are the Law on the Basis of Public Information and the Laws related to the prevention of the abuse of the freedom of the press and foreign information activity in the FR of Yugoslavia. The relevant laws in the Republic of Serbia are the Laws on Public Information and the Law on Radio and Television. No mention is made in the Report of the legal regulation of this matter in the Republic of Montenegro. The Government proposal, referred to in the Report, did not provide for the prevention of foreign support to the media in the FR of Yugoslavia, but for the obligation of the Yugoslav media to provide regular information as to the provider and the amount of foreign (financial) assistance. Accordingly, no prior Government approval was envisaged. The said registration was not to be a special feature of the media situation in the FR of Yugoslavia. Such provisions exist also in other countries and are aimed at preventing the media from becoming interest lobbies and pressure groups. In this context, it is reminded that public relations agencies in the United States, for instance, are obliged to submit to the Ministry of Justice quarterly reports, specifying who their customers are, how much they are paid and whence the payments are made.

5. It is true that Radio-Television Serbia broadcasts nationwide (para 125), but it does not mean that it has monopolized the air. The citizens of the Republic of Serbia could watch information programmes of Radio and Television Montenegro. All citizens of the FR of Yugoslavia could watch foreign television, such as CNN, Sky or Euronews via satellite. There is no law that would prevent a private or public station to broadcast all over the FR of Yugoslavia provided it has enough capital for the venture and fulfils the legal and technical conditions to be given a frequency. It is pointed out that the range of the public station "TV Politika" and the private "BK" television is increasing.

6. Legally, the TV station Studio B was never a private station (para 126). It was established in 1978 by the investment of state capital. The basic misunderstanding of the "problem" is in that the Economic Court, i.e. higher legal instances, including the Constitutional Court, have the final say in a legal case which includes property. The question of the ownership of Studio B is not political but property-related and the goal of the resolution of property relations was to prevent the "sale" of the institution in which the City of Belgrade and the community had invested capital and equipment for almost two decades for a symbolic amount of money (or "fictitious capital"). After all, the litigation over the question of ownership lasted over a year and a half. It is not true that only independent Radio B-92 continues to exist. "Polyphony" is a very distinctive feature of the political and media situation in the FR of Yugoslavia and individuals and groups are very critical of the government and the ruling party. The media which consider themselves

independent of the government are free to operate and some of them do not deny that their editorial policy is influenced by the opposition parties and a number of international factors which also support them materially.

7. The circulation of "Naša Borba" (para 127) is less than 10 000 copies, while the number of unsold copies is very high, which is telling evidence of the influence of this newspaper on the Yugoslav public. In the background of the so-called case of "Borba" was also a legal and property-related dispute: a private entrepreneur wanted to take over the business premises of about 20 000 sq.m. for about DIN 200 000 (loan, cca. $ 40 000), the amount which elsewhere in the world of business acumen would be considered laughable.

8. The concern for human rights and the freedom of the media in the FR of Yugoslavia (para 176, Recommendations) is distorted, i.e the only concern is for the situation of the opposition media and not for the situation of all media.

The fact is that the FR of Yugoslavia strives to improve the legal regulation in the field of public information, primarily because of the legal vacuum that occurred after the secession of the former Yugoslav Republics. It is expected that a new federal law on public information in the FR of Yugoslavia will be adopted this year.

9. Examination of some questions of the situation of the media in the FR of Yugoslavia is made in the Report in the manner which displays insufficient readiness to take into account the detailed comments supplied by the Government of the FR of Yugoslavia in its reply to the separate report of Special Rapporteur Mazowiecki on the media of public information (Section on the FR of Yugoslavia), published in Doc. E/CN.4/1995/54 of 13 December 1994.

II Kosovo and Metohija

10. As to the observations regarding Kosovo and Metohija in the section of the Report entitled "Situation of minorities", the Government points out that there is no discrimination against the ethnic and religious groups in Kosovo and Metohija. This may indeed be a foreigner's impression because of the boycott and non-recognition of the State of Serbia and the non-exercise of the constitutionally guaranteed rights by the majority of the members of the Albanian national minority in Kosovo and Metohija.

11. The remark in para 140 is not accurate, since it provides that "widespread discrimination against particular ethnic and religious groups continues to be reported in the FRY." Such allegations of racial discrimination must be well-documented, and not rendered as flat-rate claims. The same applies to para 142, concerning the situation in Kosovo and Metohija, which reads that the Special Rapporteur has received "contradictory information." Hence, there are no grounds for allegations concerning racial discrimination against minorities in the FRY.

12. The accommodation of the displaced Serbs from Krajina and Bosnia in Kosovo and Metohija does not threaten, nor can it do so, the ethnic composition of the population. This is best evidenced by the fact that only

about 12 000 expellees have been accommodated in Kosovo and Metohija so far, which accounts for less than 1 per cent of the estimated number of the members of the Albanian national minority living in Kosovo and Metohija.

13. The contention that the Albanian minority established a parallel education system in Kosovo and Metohija because of the suspension of the former status of Kosovo as a federal unit is inaccurate. This was done by Albanian secessionist leaders in Kosovo and Metohija, with all forms of assistance from Albania or from within the then Yugoslavia, i.e. from its secessionist Republics. This was an unconstitutional, unlawful and illegal establishment of parallel and parastate organs in Kosovo and Metohija by Albanian separatists, inadmissible by the provisions of the documents of the United Nations, OSCE and the Council of Europe on national minorities and punishable by law in every democratic country. In giving such assessments, the Report would have to state explicitly that the arguments of the so-called Albanian alternative, i.e. separatists, are being reported. According to the Constitutions of the Republic of Serbia and the Federal Republic of Yugoslavia, both Kosovo and Metohija and Vojvodina, are granted the status of autonomous province, which is in accordance with their constitutional treatment in the post-World War Two constitutional arrangements of the former Yugoslavia. Accordingly, the autonomies of Kosovo and Metohija and Vojvodina have not been suspended; they are guaranteed also by the present Constitutions of the Republic of Serbia and the Federal Republic of Yugoslavia, while the Albanian separatists continue to put out illegitimate and unfounded requests for the recognition of the status of Republic (federal unit) to Kosovo and Metohija, which they perceive as only a transitional period to the secession from the FR of Yugoslavia. They do not even hide this goal of theirs which is inadmissible by international law, United Nations Charter, Helsinki Charter and other documents of the OSCE or the Council of Europe.

Speaking of the so-called parallel administrative system set up by the members of the Albanian national minority as a counterweight to legal authorities, it should be pointed out that that system hardly functions in any segment, except in tax collection (otherwise very reminiscent of racketeering) and in the field of education.

14. According to the Constitution, elementary education is compulsory. This is why, among other things, the State has countenanced the use of school premises, teaching aids and inventory by Albanian teachers and children, although, in Yugoslavia, these children are taught according to unrecognized curricula. Accordingly, the contention of the Special Rapporteur that "the rejection by the Albanian population of the Government's decision to apply a uniform education system and curriculum have resulted in the summary dismissal of a large number of schoolteachers" should be explained that unauthorized changing of the official curricula is an unlawful act, aimed at undermining the uniform system of the country by the introduction of an illegal parallel education and that, as such, it is contrary to the provisions of the United Nations, OSCE and the Council of Europe related to national minorities and punishable by law in every democratic country. The sole responsibility for the short- and long-term consequences of this act for the Albanian children and their education lies on the political protagonists of these unlawful and unconstitutional acts.

Secondary and high education within the parallel system is organized illegally in private homes, except in ethnically pure communities where elementary and secondary school premises are used. By and large, the conditions in private homes are substandard, while the data on the quality and professional qualifications of teachers are unavailable.

There is no knowledge of any intimidation of Albanian children when not on school premises.

15. The information that the members of the Albanian national minority boycott medical services calls for additional explanation. According to the data of the Hospital Centre in Priština, even 90 per cent of their patients and more than 50 per cent of the medical staff, including nurses and doctors, belong to the Albanian national minority. The alleged poisoning incident, referred to in the Report, was the execution of a pre-planned scenario in the presence of television cameras and ambulances, which just "happened to be on the spot". To make the "poisoning" even more convincing, it "affected" only the Albanian and not the Serbian children, although the children were ferried directly from schools of a mixed ethnic composition. For the purpose of explanation, it should be added that this incident was staged at the time when the members of the Albanian national minority wielded almost exclusive power in Kosovo and Metohija and when the medical staff in Kosovo and Metohija hospitals was over 90 per cent Albanian. Also, the "poisoning" incident was not related to the vaccination programme at all, but was just another of the farcical inscenations, aimed at internationalizing the question of Kosovo and Metohija. It is our view that, after so many years, there is no need to mention this "incident" which was, otherwise, unmasked as a farce, the essence and background of which were explained, among others, within the United Nations at the session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities sitting at the time of the "happening" of the incident in Geneva.

The mortality rate of children has increased, but in the estimation of the state hospital in Priština, the root cause of the situation are the sanctions, i.e. the weakening of the immunity of the population, and general deterioration of medical services, which was dramatically felt throughout Yugoslavia during the period of sanctions. Besides, there are frequent cases that, following unprofessional interventions in private Albanian surgeries, pregnant Albanian women are brought to the state hospital in Priština in critical conditions which sometimes end tragically.

16. As to the allegation of the abuse of power and authority by officials of the Ministry of the Interior (para 147), the following data are supplied for the Republic of Serbia for 1993 and 1994:

- no criminal procedure has been instituted for the criminal act of illegal arrest under Article 189, paras 2 and 3 of the Penal Code of the FR of Yugoslavia and for the criminal act of the abuse of power and authority under Article 191 of the Penal Code of the FR of Yugoslavia.

- one criminal procedure has been instituted for the criminal act of extortion of confession under Article 190 of the Penal Code of the FR of Yugoslavia;

- one criminal procedure has been instituted for the criminal act of extortion of confession under Article 65 of the Criminal Law of the Republic of Serbia;

- two criminal procedures have been instituted for the criminal act of sexual harassment or carnal acts by the abuse of power and authority under Article 107 of the Criminal Law of the Republic of Serbia;

- 18 criminal procedures have been instituted for the criminal act of illegal arrest under Article 63, paras 3, 4 and 5 of the Criminal Law of the Republic of Serbia, and

- 128 criminal procedures have been instituted for the criminal act of maltreatment committed in the performance of one's duties under Article 66 of the Criminal Law of the Republic of Serbia.

Almost all instituted criminal procedures have been concluded before the first instance courts, but in respect to legal remedy they are presently conducted before the second instance courts.

17. According to the information of the competent judicial and police authorities in Kosovo and Metohija related to the recent cases of alleged arrest and torture of the members of the Albanian national minority (e.g. cases alleged in the joint letter of L. Joinet, Chairman of the Working Group on Arbitrary Arrests, N.S. Rodley, Special Rapporteur of the United Nations Commission on Human Rights for the Question of Torture and E. Rehn of 22 March 1996 to the Federal Minister for Foreign Affairs of the FR of Yugoslavia, M. Milutinovic), no criminal proceedings have been instituted against the persons mentioned in the letter nor are they detained in any district prison. Also, the said persons have filed no criminal report against the officials of the Ministry of the Interior because of alleged torture or injuries.

This, and some previous cases are indicative of a smear campaign, aimed at vilifying the FR of Yugoslavia in the media and within the United Nations Commission on Human Rights and calculated at bringing additional pressure to bear on it. Also, it is noticeable that the said persons approach international institutions, reporting alleged arrests and torture without providing valid evidence, even before they have approached the constitutional and legal authorities in their own country or resorted to legal remedies provided for the situations. More often than not, these acts are political demonstrations.

18. The general situation in Kosovo and Metohija is better than it used to be in previous years. The animosity between various ethnic groups has subsided and an ever greater number of ethnic Albanians return to work and approach government agencies to regulate their rights and obligations. The situation is different with respect to political parties as the option of "independent Kosovo" among Albanian "alternative" politicians, i.e. its secession from the FR of Yugoslavia, continues to be the order of the day. Nonetheless, the inclusion of the members of the Albanian national minority in the social and political life of the Autonomous Province of Kosovo and

Metohija is on the rise, which the Government of the FR of Yugoslavia welcomes and encourages as being in the interest of all, both in Kosovo and Metohija and the FR of Yugoslavia.

The position of the international community that borders cannot be changed is very explicit and excludes the option of the so-called independent Kosovo, insisted upon by Albanian separatists in Kosovo and Metohija. The Governments of the Republic of Serbia and the FR of Yugoslavia do not intend to change the present constitutional status of the Autonomous Provinces of Kosovo and Metohija and Vojvodina. Despite the Albanian language media cover-up, the fact has reached the members of the Albanian national minority who are increasingly displaying their dissatisfaction with the political leaders of separatist parties as they realize that they have been deceived and that various promises of the so-called independent Kosovo have been a great illusion.

Businessmen are probably the most cooperative segment of the population of the Albanian national minority, particularly in view of the fact that over 95 per cent of the Kosovo and Metohija private capital is in the hands of the Albanians mainly as a result of the transition to market economy. This has accounted for the establishment of business and other contacts on an increasing scale and the possibility of future coexistence is voiced ever more frequently.

19. As to the observations of the Special Rapporteur in the conclusions and recommendations related to the media situation in Kosovo and Metohija it is pointed out that 25 papers and magazines are currently published in the Albanian language. All these papers are free from any type of Government control or influence.

This is best evidenced by the fact that none of these magazines has been banned since 1990, although the vast majority of their articles have an extremely hostile attitude towards everything Serbian and Yugoslav and encourage separatism.

The Government of the FR of Yugoslavia ensures full implementation of the constitutional provision of the right to express ethnic culture, language and religion in Kosovo and Metohija, Vojvodina and the Raška region. Accordingly, the concern over this question presented in one of the conclusions is unfounded.

However, in order that this and other constitutional provisions be implemented consistently, it is necessary for the members of the Albanian national minority in Kosovo and Metohija to respect the Constitutions of the Republic of Serbia and the FR of Yugoslavia in full.

20. The statement of the Special Rapporteur that it is necessary to establish dialogue between the authorities and the representatives of the minorities should also point to the readiness of the FR of Yugoslavia to engage in such dialogue and of the numerous calls that the FR of Yugoslavia has continually made to the leaders of the political parties of the Albanian national minority in Kosovo and Metohija. For, it is exactly these leaders who have turned a deaf ear to all these calls so that the Special Rapporteur, as

well as the international community, should state this unequivocally and direct their pressure for the establishment of dialogue to the Albanian political leaders in Kosovo and Metohija.

III Raška Region

21. In this and other sections of the Report, the Special Rapporteur uses some unconstitutional names (Kosovo is used instead of Kosovo and Metohija), as well as administrative units non-existent in the FR of Yugoslavia (Sandžak), as has been the case in other previous reports. The correct name for the area is "Raska Region" and not "Sandjak", which is a Turkish word meaning "region". It is reiterated once again that the territorial units in the Republic of Serbia and their names have been determined by the Constitution of the Republic of Serbia: Republic of Serbia, Autonomous Province of Kosovo and Metohija, Autonomous Province of Vojvodina and municipalities. Serbia is divided by a separate decree into 29 districts. This remark and information of the Government of the FR of Yugoslavia have been presented, like many others, on many occasions in its comments to the previous reports of the Special Rapporteur for the Former Yugoslavia and are contained, inter alia, also in Doc. A/49/273, S/1994/864 of 22 July 1994. Therefore, the statement in this section to the effect that "Sandžak" is administratively divided between Serbia and Montenegro is contrary to the Constitution of the FR of Yugoslavia and the constitutions of its constituent Republics.

The statement that this region is divided into Serb-majority electorial districts is also inaccurate. Electorial districts are established for certain territory and their establishment is unrelated to national composition.

22. The percentage of Serb and Muslim population in the municipalities of the Raska region differs from municipality to municipality; therefore the data given in the report concerning the percentage ratio between the Muslims and the Serbs is irrelevant, to say the least. According to the latest official reports of the competent organs, the public order and peace situation in the municipalities of Novi Pazar and Tutin is exceptionally stable, thus denying the allegations of harassment against the Moslim population. In the last couple of years there has been no case of disturbance of public order and peace.

The allegation that property owned by the expelled Muslim population has been appropriated by Serb authorities is also false.

As far as the conscripts are concerned, it has been noticed that, after the refusal of the Muslims to serve in the army in 1991, a great number of them expressed their wish last year to serve in the army on a voluntary basis. The number of those who reported voluntarily to serve in the army is so big that the military centres cannot accept them all.

23. Furthermore, it should be also noted that no murder case on national basis was registered in the municipalities of Novi Pazar and Tutin in the last five years.

Ten political parties operate in the municipalities of this part of Serbia whose members are both Serbs and Muslims.

A number of citizens, Serbs and Muslims, have been tried for illegal possession and sale of weapons. In 1994 the police organs impounded 2 500 long barrel weapons (machine guns, automatic rifles), about 600 mines, tens of kilograms of explosive and other military equipment from para-military Muslim organizations. About 250 men from this region have been trained in Turkey for subversive and terrorist activities, including 150 persons from Novi Pazar. Some of them have been arrested and dispossessed of weapons, but they have not been maltreated.

No case of abuse has been recorded. No appeal has been lodged to the competent authorities against abuse and maltreatment.

Judicial protection of the constitutional freedoms and rights is recognized and guaranteed. Courts carry out their functions as envisaged and 90 per cent of their personnel are Muslims.

In the municipalities of Novi Pazar and Tutin, the Muslims hold the posts of the Vice-President of the Municipal Assembly and the President of the Executive Committee of the Municipal Assembly (Municipality of Novi Pazar) and the post of the Vice-President of the Municipal Assembly and the President of the Executive Committee of the Municipal Assembly (Municipality of Tutin). The situation is similar in other municipalities.

Almost 90 per cent of company directors in these municipalities are of Muslim nationality, while over 90 per cent of private companies and shops are founded and owned by Muslims.

In many cases Muslim families have provided shelter in their homes to the Serb refugees expelled from Croatia and Bosna-Hercegovina, while Serb families received refugees of other nationalities.

Finally, the competent authorities in some municipalities of the Raška region that have been informed of this part of the Report of the Special Rapporteur and requested to provide explanation, have noted with regret that this part of the Report is full of misinformation, used also in the past for the purpose of misinforming some international fora or representatives. Such misinformation is churned by some Muslim extremists of the Party of Democratic Action of Novi Pazar, who are connected with Islamic fundamentalists and who have been "educated" in Tuzla and other towns of the present Muslim-Croatian Federation.

24. The announcement in the Report (para 161) that during her forthcoming visit to the FR of Yugoslavia, the Special Rapporteur will address "the human rights violations against the Bulgarian minority in the eastern area of Serbia" is most surprising. It is expected that, before addressing such cases in the Report (advance allegations of the "human rights violations" have already be made), the Special Rapporteur approach also the official authorities of the FR of Yugoslavia for relevant information and replies concerning concrete allegations.

Illustrative in this context is the recent statement of the member of the Bulgarian minority in the FR of Yugoslavia from Dimitrovgrad and the President of the Municipal Committee of the Socialist Party of Serbia, Mr. D. Kolev, to

the effect that "in the Municipal Assembly out of 33 councillors, 32 of them are members of the Bulgarian minority. Out of seven members of the Executive Committee, five are members of the Bulgarian minority. In the Municipal Court out of four judges only one is not a member of the Bulgarian minority. In the elementary school out of 104 teachers, 97 of them are Bulgarians, while in the grammar school out of 39 professors only four of them are not members of the Bulgarian minority. In the economic sector this proportion is even more evident: out of nine directors, eight of them are members of the Bulgarian minority. Education is organized also in the languages of national minorities."

IV Vojvodina

25. This part of the Report renders most accurate statistical data on the composition of the Vojvodina population, which sustained substantial changes throughout history.

The heterogeneous configuration of the Vojvodina population has been preserved to the present times and, as stated in the Report, this diversity is being fully respected under the 1992 Constitution of the Federal Republic of Yugoslavia, with guarantees envisaged for minority rights in the field of culture, education and language.

Notwithstanding this, however, the Report contains allegations that the Hungarian and Croat minorities "have expressed concern" about the effective implementation of their rights. A large number of data and facts, some of which follow, point to the actual situation - that these minorities, as well as all the others, have no reason for any concern.

26. As far as the Hungarian minority and its rights to education are concerned, the following are some of the most characteristic facts and figures:

In compulsory elementary education establishments, teaching in Hungarian is conducted in 29 communes, in 84 elementary schools and in 34 separate classes, attended by 23,73 per cent of students. The share of teaching in the Hungarian language for the total elementary school population (210 505 pupils), is 11,33 %. Out of the total number of Hungarian pupils (28 629), in the academic year 1994-95, classes conducted in the Hungarian language were attended by 22 901 pupils, i.e. 79,99 per cent.

Most precise data are available concerning adult and retarded students' education, as well as elementary musical school education.

In high schools, teaching in Hungarian is conducted in 13 communes - in 7 grammar schools and 20 vocational training schools. In the academic year 1994/95, teaching in Hungarian was conducted in 27 high schools with 261 classes, for 6 662 students.

Under the respective College and University Education Laws, teaching may be conducted in national minority languages.

In the 1994-95 academic year, 4 688 students attended colleges, with the share of ethnic Hungarian students amounting to 13,08 per cent. At the Teacher Training College in Subotica, 131 ethnic Hungarian students were taught in the Hungarian language. At the Engineering College in Subotica, teaching at all departments is conducted in the Hungarian language for the 231 ethnic Hungarian students.

Out of the total of ethnic Hungarian college students (613), 373 students (60.85 per cent) receive education in their mother tongue.

Higher education is conducted at the 13 faculties of the Novi Sad University. In the 1994/95 academic year, the University was attended by 20 248 students, out of whom 6,73 % were ethnic Hungarians.

Teaching in the Hungarian language is conducted at the Faculty of Economics in Subotica (with 110 ethnic Hungarian students) and at the Academy of Arts (13); at the Faculty of the Humanities - Department for the Hungarian Language and Literature (with 165 students), Department for the English Language and Literature (with classes and seminars conducted for ethnic Hungarian students as well), and Department of History.

Out of the total number of ethnic Hungarian University students (1363), 21.79 per cent attend classes in the Hungarian language.

These data, along with others, explicitly substantiate the fact that there is no discrimination against the ethnic Hungarian minority students in the educational field in the Autonomous Province of Vojvodina; on the contrary, there are all conditions for the further development of their body national.

27. The same applies to the culture, information and publishing fields. There is not a single reason for expressing "fears that Hungarian historical names might be permanently lost".

The following facts and figures also are in support of this assertion:

A substantial number of national minorities' artistic ensembles and associations are active in the multi-national milieux of the Autonomous Province of Vojvodina as a reflection of democratic relations and constitutionally guaranteed rights of citizens to free organization, aimed at free expression of national affiliation, of culture and the use of mother tongue and alphabet.

There is also a long-standing tradition of enlarging book holdings in the Hungarian language, and the libraries in all the cities settled by the ethnic Hungarian minority (Subotica, Senta, Kanjiza, Becej, Zrenjanin, etc.), possess such book holdings in the Hungarian language.

Two professional theatres in the Autonomous Province of Vojvodina perform in the Hungarian language: in Novi Sad ("The Novi Sad Theatre" - Ujvideki Sinhasz) and Subotica ("National Theatre" - Nepsinhasz"). Children's theatres in Subotica, Novi Sad and Zrenjanin perform in Serbian and/or Hungarian languages.

Folklore music activities are also being promoted. Over 420 culture/artistic ensembles are active in Vojvodina, with over 100 of them oriented primarily to fostering the Hungarian national tradition.

28. The ethnic Croatian minority in Vojvodina also exercises diverse rights aimed at fostering its national and cultural identity, along with other citizens of the Federal Republic of Yugoslavia.

The Democratic League of Vojvodina Croats is a political organization acting in the Autonomous Province of Vojvodina.

At local authorities' elections in Vojvodina, this party won ten seats at the Communal Assembly of Subotica, and one seat in Sombor and Sremski Karlovci respectively. At one time, the Democratic League of the Vojvodina Croats won one seat at the Vojvodina Provincial Assembly.

Various organizations and institutions of Croats have been founded and are active in the AP of Vojvodina - the Bujnevacko kolo Croatian Culture Center, in Subotica, the "Matija Gubec" Croatian Culture-Educational Company in Subotica and Ruma, the "Vladimir Nazor" culture and artistic company in Sombor, etc.

The Democratic League of Vojvodina Croats issues a gazette, the Voice of the Plain, registered with the Subotica authorities in 1991. It is a fortnightly, and it furnishes the members of the DLVC information on the activities and actions of this organization.

29. The issue of refugees is mentioned in this section of the Report, with concern expressed that the settlement of large number of refugees might result in a change of the ethnic composition and balance in some communes of Vojvodina. Their settlement in Vojvodina is not and can not be the cause for such concerns.

It is true that large numbers of refugees have settled in Vojvodina, particularly so in the aftermath of the large-scale Serb people exodus from Western Slavonia (May 1995), and from Serbian Krajina (August 1995). There are several reasons for their settlement in Vojvodina - historical, economic and ethical in nature.

By its comprehensively pursued policy and efforts aimed at achieving peace and normal living conditions for all in the former Yugoslavia, the FRY is giving its contribution to solving the issues mentioned in this part of the Report. It is well-known that Yugoslavia is making utmost efforts aimed at providing conditions for all those who wish so, to return to their ancestral homes. But, their return depends mostly on the states from which they were evicted, and on the willingness of the international community to make their dignified and safe return possible by providing political and material vehicles for it. Hence, the Government of the FRY fully supports the recommendation made by the Special Rapporteur, contained in para 179. The FRY is not only "allowing", but it is making utmost efforts that the refugees return to their homes "of their free will and with dignity". At the same time,

it is willing to help in every way to those who decide to remain in the FRY. It must be noted though that Yugoslavia needs most concrete assistance of the international community for implementing any of these two options.

CONCLUSIONS AND RECOMMENDATIONS
(paragraphs 163-180)

The assessment whereby the human rights situation in the Federal Republic of Yugoslavia "remains a serious concern" (para 162) is not grounded. It would have been more to the point and more pertinent if indications were given that the situation is calling for measures of further monitoring and improvement. All the Conclusions and Recommendations would be covered by such an appraisal, since the human rights situation in the FRY is similar to and comparable with the situation prevailing generally in almost all the countries which endeavour to pursue appropriate policies in the human rights field.

April, 1996

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COMMISSION ON HUMAN RIGHTS
Fifty-second session
Agenda item 7

THE RIGHT OF PEOPLES TO SELF-DETERMINATION AND ITS APPLICATION TO PEOPLES UNDER COLONIAL OR ALIEN DOMINATION OR FOREIGN OCCUPATION

Letter dated 16 April 1996 from the Permanent Representative of Morocco to the United Nations Office at Geneva, addressed to the Chairman of the Commission on Human Rights

I have the honour to transmit herewith a note entitled "Information on the status of the process in Sahara" which the Permanent Mission wishes to bring to your attention in response to the various reports and written statements of a number of NGOs on this question.

I should be grateful if you would have the text circulated in both United Nations working languages as an official document of the fifty-second session of the Commission on Human Rights.

(Signed) Nacer Benjelloun-Touimi
Permanent Representative

Annex

INFORMATION ON THE STATUS OF THE PROCESS IN SAHARA

At the fifty-second session of the Commission on Human Rights, a number of non-governmental organizations (NGOs) have submitted written statements on the Saharan question in which they claim that Morocco is largely to blame for the fact that the MINURSO identification process, and consequently the United Nations settlement plan, are at a standstill.

The Permanent Mission of the Kingdom of Morocco in Geneva, while it can do nothing to counter the "underdog" syndrome, i.e. the preference for the presumed weaker party, wishes nevertheless to provide a number of clarifications and make a number of observations on the logic of the arguments put forward.

Firstly, we cannot accept the mistaken assumption of certain NGOs that Morocco "which is the diplomatically and militarily stronger party and controls the territory of Sahara" is necessarily the party exerting the most pressure on the process and hindering the implementation of the settlement plan.

It is alleged by a number of NGOs that the Moroccan authorities are on the one hand preventing persons who are eligible to vote and have completed the necessary forms from going to United Nations registration centres and on the other are presenting non-Saharan applicants or else are confiscating registration receipts from applicants with a view to fraudulently presenting other applicants when voter registration cards are issued.

It should be noted in this regard that, on 16 March 1995, the Permanent Mission sent to all Member States and NGOs a note containing information on the MINURSO registration and identification process in Sahara, in which it replied in detail to these allegations and others connected with the testimony of Mr. Frank Ruddy, the former United States Ambassador and former Vice-Chairman of the MINURSO Identification Commission.

Suffice it to say that, because of its complexity, the question of registration and identification was the subject of meticulous and arduous consultations over many months and that it was agreed that both parties should be involved in the initial stages. It should also be emphasized that it is the Identification Commission, whose members are all appointed by the Secretary-General after consultation with the Security Council and States Members of the United Nations, which must interview potential voters and issue a court-type decision.

In other words, it would be pointless for Morocco to have non-Saharans participate, as they would in any event be rejected by the Commission, or to prevent genuine Saharans from registering, since they can appeal a decision to exclude them from the voters' list.

In this regard, Mr. Boutros-Ghali states clearly in his report S/1994/819, of 12 July 1994, that "Once decisions have been made on voter eligibility, the Identification Commission will publish a voters' list and

applicants will then receive their voter's registration card from the centres. Applicants who do not appear on the voters' list have the right to appeal the Commission's decision. Similarly, persons on the list have the right to challenge the inclusion of persons they do not believe qualified" and concludes on this matter (report S/1994/1420 of 14 December 1994) that "the Identification Commission was an independent body whose members ... would carry out their mandate with impartiality, fairness and integrity".

With regard to the identification procedure, the Secretary-General noted in his report S/1994/819 that it had been meticulously worked out. He notes in particular that "After having been photographed and fingerprinted, each applicant will appear before the identification team, which, in the presence of the relevant sheikhs and the official observers, will question the applicant concerning his or her identity and eligibility". In the same report, Mr. Boutros-Ghali adds "in accordance with the settlement plan, the official observers will be invited to submit to the Identification Commission any comments in writing, within 24 hours of the interview. These comments will be confidential and will not be communicated to the other party or to the sheikhs".

Concerning the further argument that the Identification Commission's work is not sufficiently transparent, it should first be noted that the process was made confidential in order to avoid pressure being exerted by the parties on members of the Commission, sheikhs and observers. Furthermore, the Identification Commission's decisions are open to appeal. Finally, as the Secretary-General pointed out in his last report to the Security Council (S/1996/43 of 19 January 1996), "While agreeing to the need for transparency, [his special envoy to the region] rejected any notion that the Commission had failed to observe complete impartiality in the performance of its tasks". In paragraph 16, he went on to say that "it was agreed [in order to increase the transparency of the process and reduce mistrust] that the Commission would make arrangements to share with both parties, in a suitable format, a list of applicants identified so far as eligible to vote, as well as a list of applicants still to be identified".

Mr. Boutros-Ghali concludes by noting that, on his return from the region, his Special Envoy had been reinforced in his impression that "on the whole, the Commission is performing its difficult task with the utmost regard for fairness and impartiality. The task of the Commission is not rendered any easier by the parties' critical scrutiny of its work and allegations impugning the integrity of individual members".

As for the need for "independent observers" to supervise the MINURSO process, it is worth noting that, under the United Nations settlement plan accepted by the parties and endorsed by the Security Council, the referendum process is to be organized and controlled from start to finish by the United Nations. In other words, the referendum will be organized by qualified, honest and independent international personnel under the responsibility of the Secretary-General of the United Nations and the continuous supervision of the Security Council and ultimately of the United Nations General Assembly. It is therefore astonishing to note the

insistence of some circles in wishing to impose another control structure similar to those set up for referendums, elections or plebiscites organized by one of the parties, with the United Nations simply supervising.

As for who is to blame for the standstill reached in the identification process itself, we should remember what has happened at least since the eve of the adoption of the identification criteria, when, as pointed out by Prime Minister Filali in a letter addressed to the Secretary-General on 27 June 1995 (S/1995/514), the Kingdom of Morocco accepted the identification procedure proposed by the Secretary-General after the adoption of Security Council resolution 725 (1991) of 31 December 1991, notwithstanding the serious reservations which it had expressed at the time, whereas the other party had rejected them outright.

Moreover, Morocco had subsequently accepted the compromise interpretation and application of the criteria proposed by the Secretary-General to accommodate the other party's position, whereas the other party refused and only reluctantly agreed to do so after the Security Council had described the compromise as a sound basis for launching the identification operation in resolution 907 (1994) of 29 March 1994, i.e. more than two years after the criteria had been established by the Secretary-General of the United Nations.

Since then and contrary to this agreement, the other party instructed its sheikhs systematically to oppose almost any request by persons applying for identification on the basis of criteria 4 and 5 at the very same time it agreed, in a letter signed by its so-called chiefs, to the application of the compromise.

The other party thus persists in falsifying a basic truth, which holds that any person who submits an application continues to be nothing more than an applicant until the Identification Commission reaches a decision (and this holds true for all applicants residing outside the Territory who have been registered but not identified). The other party cannot, moreover, take the place of the Identification Commission by deciding who is Saharan and who is not even before the Commission has reached a decision on the basis of the established criteria.

In paragraph 28 of the above-mentioned document S/1996/43, the Secretary-General does not fail to agree with this view, stating that "In his discussions with Frente POLISARIO, my Special Envoy emphasized that the Identification Commission was obliged to process all applications submitted before the expiry of the relevant deadline. He also insisted that, under the settlement plan, the parties were duty-bound to cooperate in the identification of all applicants".

The delays in the identification operation and the current standstill are thus attributable beyond any possible doubt to the other party, which has long refused to accept the identification criteria that two successive Secretaries-General have described as "a just and fair basis for the monitoring of the referendum" (doc. S/23299 of 19 December 1991 and S/25170 of 26 January 1993) and which, after having reluctantly agreed to their implementation, now refuses to apply them fully, since it continues "to decline to cooperate in the identification of another large group of

applicants, i.e. those appearing under the codes H41, H61 and J51/52 [referred to in the 1974 Spanish census], except for those few who are eligible by virtue of their inclusion in the 1974 census" (see para. 27 of doc. S/1996/43).

With regard to conditions in the Tindouf camps in Algeria, the same syndrome seems to make some NGOs attribute human rights violations, including the ill-treatment attested to by observers, to the extremely difficult conditions in the desert that are the result of the harsh climate, rough terrain and lack of infrastructure, whereas it has been determined that such violations have indeed been committed.

The Permanent Mission has, moreover, already had occasion to draw the attention of United Nations bodies to the dozens of Saharans, mostly women, who escape from the Tindouf camps every few weeks and who testify to the harsh restrictions and harassment to which they are subjected in the camps, including the fact that the population is being imprisoned inside a double security line, i.e. the other party's police apparatus and the host country's military authority, to prevent it from leaving the regions.

It should be stated and recalled that the Kingdom of Morocco has been cooperating with the Centre for Human Rights for a long time in order to shed light on all cases of alleged missing persons, particularly in the context of the Saharan question.

The Permanent Mission would like to quote extracts from two letters, dated 30 August and 11 December 1995, which were sent to it by the Centre for Human Rights and which show that Morocco is firmly determined to cooperate and to clear up all documented cases.

The first letter notes that, at the August session, "the working group has had the pleasure of meeting with representatives of the [Moroccan] Government, with whom it held fruitful discussions. It expresses its warmest appreciation for the third set of 19 cases which the Government transmitted to it on that occasion together with new information on their fate".

The second letter stresses that, "on the basis of the replies which have been received from your Government and on which the sources have never made any comments during the six-month time-frame, the working group has decided to regard the 26 cases listed in the annex as having been cleared up".

The Permanent Mission would also like to point out that the above-mentioned NGO documents refer to "hundreds of missing persons", but give only a few names in connection with which searches have never been interrupted.

In this context, it is necessary to denounce the practices of the other party and its allies, which do not hesitate, in order to pad out the lists submitted to NGOs and to the Centre for Human Rights, to include the same alleged missing person under several names. As already pointed out to the Centre for Human Rights, it is not difficult to manipulate names in a nomadic society with an oral tradition and to refer to a person either by his patronymic and his first name or by adding the name of his grandfather to that

of his father. In some cases, the same person is referred to by names made up, for example, on the basis of his ethnic group, his physical characteristics and even his occupation.

Worse still, the other party made a practice of never declaring the losses it suffered as a result of attacks, and, in order to keep up the morale of the other armed elements and for obvious propaganda purposes, of claiming that those who died on the battlefield were Saharan missing persons about whom clarifications should be sought.

In actual fact, it is quite clear from the documents published by various United Nations bodies that the Kingdom of Morocco is cooperating in the settlement of the Saharan question and that a large number of allegations in this regard and many untruths are linked primarily to the complexity of the operations forming part of the Settlement Plan, to the fact that the process involves matters with which the United Nations has never had any experience, such as the identification of the electorate in particularly complex conditions (a tribal and nomadic society in the Sahara Desert), and to the policy of simplification, which necessarily involves reduction, and of disinformation which the other party and its allies pursue systematically in order to try to pre-empt the current process and head it in another direction which they prefer and have relentlessly been calling for.

Geneva, 16 April 1996

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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Letter dated 15 April 1996 from the Chairman of the Organization of the Islamic Conference Contact Group on Jammu and Kashmir addressed to the Chairman of the Commission on Human Rights

I have the honour to transmit to you herewith* the text of a declaration adopted by the Organization of the Islamic Conference Contact Group on Jammu and Kashmir at its meeting held at the United Nations Office at Geneva on 15 April 1996 as well as the text of a memorandum on human rights violations in Jammu and Kashmir. I should be grateful if Your Excellency could kindly have the enclosed declaration and the memorandum circulated as official documents of the fifty-second session of the Commission on Human Rights, under agenda item 10.

(Signed): El Hadj Mamadou Saliou Sylla
Chairman of the OIC Contact Group
on Jammu and Kashmir

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* The annexes are reproduced as received, in the language of submission only.

ANNEX 1

DECLARATION BY THE OIC CONTACT GROUP ON JAMMU AND KASHMIR

In accordance with the mandate entrusted under para 19 of Resolution No. 7/23-P on the "Jammu and Kashmir Dispute" adopted by the Twenty-third Islamic Conference of Foreign Ministers held at Conakry in December 1995, the OIC Contact Group on Jammu and Kashmir met at the United Nations Office, Geneva on Monday, 15 April, 1996 to review the deteriorating situation in Jammu and Kashmir.

2. The meeting was presided over by the representative of Guinea and attended by the representatives of Morocco, Niger, Pakistan, Saudi Arabia, Turkey and the OIC Secretary General.

3. The true representatives of the Kashmiri people addressed the Contact Group on the continuing large-scale violations of human rights and other atrocities against the people of Jammu and Kashmir. The Kashmiri representatives also submitted a Memorandum on the "Jammu and Kashmir dispute".

4. The Contact Group expressed deep concern at the intensification of the repression in Jammu and Kashmir by the Indian forces as well as the brutal custodial murder of Jalil Andrabi, Chairman of Kashmir Commission of Jurists and massacre of innocent Kashmiris on 30 March 1996 in the vicinity of the Hazratbal shrine as well as attacks on the Kashmiri leaders representing the All Parties Hurriyat Conference.

5. The Contact Group, in pursuance of resolution 7/23-P on the "Jammu and Kashmir dispute" adopted by the Twenty-third Islamic Conference of Foreign Ministers, reaffirmed that any political process/elections held under foreign occupation cannot be a substitute to the exercise of the right of self-determination by people of Kashmir as is provided in the relevant Security Council resolutions and condemned the coercive measures to force the Kashmiri people to accept an election process which is in contravention of the UN Security Council resolutions.

6. The Contact Group reaffirmed the support which the OIC has declared in its resolutions for the struggle for self-determination of the Kashmiri people in accordance with UN Security Council resolutions and for safeguarding their fundamental rights on the basis of international legitimacy and called upon Member States of the OIC to persuade India to end the grave human rights violations being perpetrated against the Kashmiri people in Indian occupied Kashmir.

7. The Contact Group recalled the Special Declaration on "Jammu and Kashmir" adopted by the Seventh Islamic Summit Conference at Casablanca, Kingdom of Morocco in December, 1994 as well as the resolution on the "Jammu and Kashmir Dispute" adopted by the Twenty-third Islamic Conference of Foreign Ministers at Conakry, Republic of Guinea in December,1995 and urged the OIC Member States to promote respect for the fundamental rights of the people of Jammu and Kashmir, including their right to self-determination at the 52nd Session of the UN Commission on Human Rights.

8. The Contact Group discussed the proposal for a Ministerial meeting of the OIC Contact Group on Jammu and Kashmir in the near future to review the deteriorating situation in Jammu and Kashmir and requested the OIC Secretary General to conduct consultations for this purpose.

9. The Contact Group took note of the memorandum submitted by the true representatives of the Kashmiri people and authorized the Chairman of the Contact Group to address a communication to the Chairman of the 52nd Session of the Commission on Human Rights with the request that the declaration and the memorandum be circulated as official documents of the Commission on Human Rights, under agenda item 10.

ANNEX 2

Memorandum on the Jammu and Kashmir dispute by the true representatives of the Kashmiri people

presented to

The Organization of the Islamic Conference Contact Group on Jammu and Kashmir on 15 April 1996 in Geneva

1. The true representatives of the people of Jammu and Kashmir, belonging to Indian-occupied Kashmir and Azad Jammu and Kashmir:

Recalling the Special Declaration on Jammu and Kashmir adopted by the Islamic Summit Conference at Casablanca;

Recalling the Memorandum (A/50/577) on the Jammu and Kashmir dispute presented by the true representatives of the Kashmiri people to the Ministerial Meeting of the Organization of the Islamic Conference (OIC) Contact Group on Jammu and Kashmir on 28 September 1995, and subsequently adopted at the Annual Coordination Meeting of the Ministers of Foreign Affairs of the OIC on 3 October 1995;

Recalling the resolution on "Jammu and Kashmir Dispute" adopted by the 23rd Islamic Conference of Foreign Ministers, held at Conakry, which took note of "the Memorandum submitted by the true representatives of Jammu and Kashmir, which inter alia, asserts that the people of Jammu and Kashmir will not accept the imposition of a fraudulent political process in Kashmir and that the so-called political process or elections could not be a substitute for a plebiscite as is affirmed in Security Council Resolutions No.91 (1951) and 122 (1957)", and affirmed "that any political process/elections held under foreign occupation cannot be a substitute to the exercise of the right of self-determination by people of Kashmir as is provided in the relevant Security Council resolutions";

Having extensively deliberated upon further deterioration in the situation in Indian-occupied Kashmir, which poses a grave threat to peace and security in the entire South Asian region, as well as the worsening situation of human rights in Indian-occupied Kashmir;

Agreed to draw the attention of the members of the OIC Ministerial Contact Group on Jammu and Kashmir to the following facts;

(1) The political and security situation in South Asia is deteriorating which could erupt into nuclear confrontation;

(2) In blatant violation of the Security Council resolutions, India has continued to occupy a major part of the territory of the State of Jammu and Kashmir since 1947. India has deployed around 700,000 troops in the disputed State of Jammu and Kashmir. The United Nations Security Council had decided that the question of the accession of the State of Jammu and Kashmir should be decided through an impartial and freely held plebiscite under the auspices of the United Nations;

(3) Kashmir is not a territorial dispute. This dispute is about the exercise of the fundamental right of self-determination. Indian intransigence has resulted in the continuing denial of the right to self-determination of the people of Jammu and Kashmir. This inalienable and irrevocable right had been promised to them by India, Pakistan and the United Nations through several resolutions of the Security Council. The fulfillment of this commitment is a binding obligation on these parties and on the international community;

(4) The fraudulent elections, held in 1989 in Indian occupied Kashmir, in which, according to the Indian sources, the turn-out was less than 3 per cent, as well as the new wave of self-determination sweeping across Euro-Asia in the wake of the end of the Cold War, encouraged the Kashmiris to intensify their struggle for their liberation from the Indian yoke and for the realization of their right to self-determination;

(5) Since 1989, India has been engaged in a campaign of repression against the Kashmiri people. Fifty-five thousand innocent Kashmiris have been killed, 33,000 wounded, 55,200 are missing and more than 20,400 have been disabled. During this period, thousands of Kashmiri women, between the ages of 7 and 80, have been raped and molested by members of the Indian occupation forces as a means to break the will of the Kashmiri people to resist the Indian occupation. Properties worth billions of dollars have been destroyed by the occupation forces, including through a policy of repeated acts of arson and collective reprisals against the Kashmiris;

(6) Reports of Amnesty International, Human Rights Watch, Physicians for Human Rights, the International Commission of Jurists, the British Parliamentary Human Rights Committee, the European Parliament, the Jammu and Kashmir High Court Bar Association and many other independent organizations have all attested to the continuing massive violations of human rights in Kashmir;

(7) The Indian Government has committed serious crimes against humanity through its military and paramilitary personnel, renegades and mercenaries in Jammu and Kashmir during the last seven years. These crimes include genocide, massacres, extrajudicial killings, reprisal killings, arbitrary detention, torture, use of rape as an instrument of suppression, burning of houses, villages and townships, and destruction and desecration of holy places;

(8) India has intensified its campaign of repression in Kashmir in recent months. A Kashmiri human rights activist, Jalil Andrabi, Advocate, Chairman of the Kashmir Commission of Jurists, was kidnapped by the Indian Rashtriya Rifles on 8 March 1996. His body was found dumped in the river Jhelum on 27 March 1996. He was killed in custody as punishment for his espousal of the cause of the right to self-determination of the people of Jammu and Kashmir at the international fora, including the Commission on Human Rights, and to give a warning to other political activists.

(9) We acknowledge the fact that Mr. Andrabi's death has been condemned by diverse international opinion, including the Secretary General of the OIC, Amnesty International, the U.S. State Department, Lord Avebury, Chairman of the Parliamentary Human Rights Group, and Asia Watch. Mr. Jose Ayala Lasso, the UN High Commissioner for Human Rights, has demanded an impartial inquiry into the murder of a peaceful human rights activist.

(10) As if the killing of Mr. Jalil Andrabi was not enough, Indian soldiers massacred over 30 Kashmiris, including women and children, on 30 March 1996, in the vicinity of the Hazratbal shrine. The action taken in the Hazratbal shrine area by the Special Task Force of Indian forces against the office of a political party is totally unjustified. It was a cold-blooded, criminal and ruthless attack on political workers, some of whom had already surrendered around 5.30 a.m. After their premises had been surrounded by para-military forces, others were not even allowed to surrender. Their office was blasted and set on fire. All Parties Hurriyat Conference joined the call for a four-day strike in the disputed territory in protest against this tragedy.

(11) Twenty-two worshippers were killed by Indian army fire in Forward Kahuta in February 1996. The Neelam Valley in Azad Jammu and Kashmir is blockaded because of constant shelling from the Indian side;

(12) The representatives of the Kashmiri people deeply resent the efforts by Indian agencies to defame the Kashmiri freedom movement through the perpetration of criminal and terrorist acts for which they invariably put the blame on freedom fighters. We are extremely concerned at the prolonged captivity of hostages by Indian-sponsored terrorists posing as Kashmiris in a transparent attempt to malign and subvert the Kashmir freedom struggle. In the context of this incident, several questions need to be posed to the Indian authorities:-

- How could the kidnappings occur in an area where the occupying forces were heavily concentrated?

- Why were they unable to locate the hideout of the abductors when they were able to pick up an American hostage, Mr. Childs, who "escaped" from captivity on 8 July 1995?

- Why did they fail to track down the origin of the messages from hostage-takers, over radio, telephone and fax, despite their modern equipment, on the strength of which the Indian intelligence agencies made a false claim of intercepting a fictitious signal from the Harkat-ul-Ansar to Al-Faran?

- How did the abductors succeed, without detection, in dropping the dead body of the Norwegian tourist in the same area from where the tourists had been kidnapped?

(13) The strong condemnation and rejection by All Parties Hurriyat (Freedom) Conference of the kidnappings of Western tourists and the total strikes in Jammu and Kashmir against this act of hostage-taking are a convincing and clear testimony of the abhorrence of such acts by the Kashmiri people;

(14) Despite over six years of massive and cruel repression of unarmed civilians by 700,000 Indian troops, and destruction of the economic means for productive employment, the Indian occupation has manifestly failed to crush the will of the people of Jammu and Kashmir to win their freedom;

(15) Indian attempts to disguise its inhuman war of repression in Kashmir have not been successful. India's claims of the so-called "transparency" are belied by the facts. Access to outside observers to Kashmir remains limited. Unacceptable conditions are imposed on foreign visitors. Nor has the farce of the so-called Indian Human Rights Commission served to cover up Indian crimes in Kashmir. The Commission has no authority to investigate the violations committed by the armed forces and the paramilitary forces. Amnesty International and other human rights organizations have been denied access to Jammu and Kashmir. The thematic rapporteurs of the Commission on Human Rights on torture and religious intolerance have not been invited to Jammu and Kashmir despite India's advertised promise. Even less credible is the so-called "political process" sponsored by India in Kashmir. Indian oppressors have not found, nor will they find, any genuine interlocutors among the true representatives of the Kashmiri people;

(16) The people of Jammu and Kashmir will not accept the imposition of a fraudulent political process in Kashmir. India has failed to crush the Kashmiri struggle despite seven years of massive and brutal repression. This struggle will continue until the Kashmiris realize their right to self-determination. The All Parties' Hurriyat (Freedom) Conference, representing 34 Kashmiri political parties, has rejected the so-called political process and has declared that any election held under the Indian occupation will not be acceptable to the people of Kashmir;

(17) The Security Council has clearly enunciated that, on the basis of the agreement concluded between India and Pakistan, "the final disposition of the state of Jammu and Kashmir will be made in accordance with the will of the people expressed through the democratic method of a free and impartial

plebiscite conducted under the auspices of the United Nations";

(18) We, the representatives of the Kashmiri people, solemnly reiterate that our position regarding the final disposition of the State of Jammu and Kashmir will remain consistent with Security Council resolution 122 (1957) of 24 January 1957 which, in its paragraph 1 stated:

> "Reaffirms the affirmation in its resolution 91 (1951) and declares that the convening of a constituent assembly as recommended by the General Council of the 'All Jammu and Kashmir National Conference' and any action that Assembly may have taken or might attempt to take to determine the future shape and affiliation of the entire State or any part thereof, or action by the parties concerned in support of any such actin by the Assembly, would not constitute a disposition of the State in accordance with the above principle".

(19) The people of Jammu and Kashmir declare that no elections organized by the Indian Government in Jammu and Kashmir constitute a substitute for the plebiscite pledged by the United Nations to the people of Jammu and Kashmir. We strongly oppose the farce of fraudulent elections being imposed by the Indian Government on the people of Jammu and Kashmir and reject any elections held under Indian occupation;

(20) We are deeply concerned at the induction of additional troops, deployment of an elaborate and oppressive administrative apparatus by India and the massive campaign of repression, intimidation and persecution set in motion by the Indian army, to coerce and terrorize the people of Jammu and Kashmir into accepting and participating in the farce of the Indian sponsored elections in Kashmir;

(21) To subvert the Kashmiri resistance, and to create the "success" of these fraudulent elections, India is recruiting and training renegades and mercenaries to target segments of Kashmiri people, to criminalise them and use them to kill, harass, persecute and vandalize innocent people in Kashmir;

(22) The Indian Government has injected massive funds and arms into Jammu and Kashmir to encourage and equip these criminal elements to commit acts of terrorism against the people and political leadership of Jammu and Kashmir;

(23) As the Indian authorities seek to accelerate the process for the holding of fraudulent elections, the number of casualties and the instances of other human rights violations are bound to increase and multiply;

(24) India has used every oppressive method to silence the Kashmiri leaders who have won recognition of the world as "the true representatives of the Kashmiri people". Frustrated by the popularity of APHC and its recognition as the proponent of the inalienable right to self-determination of the Kashmiri people, the Indian security forces have

subjected them to intimidatory tactics, including attacks on the persons and properties of APHC leaders. All APHC leaders have faced personal or physical harassment or trumped up legal and financial charges;

(25) For the last one year, some of the most violent actions against the persons and properties of APHC leaders include an attack on Mr. Yasin Malik on the Eid Day, the end of Ramadan festival of Muslims all over the world, and the kidnapping of Mr. Abdul Ghani Lone last year. Mr. Lone's house was also raided. Most recently, he escaped a bomb attack. Mr. Ali Shah Gilani's house was hit by a powerful blast in October 1995 and again end December. His residence was raided by the Indian army and some of his political workers beaten up, followed by destruction of two houses in Sopore belonging to Syed Gilani's brothers. Mr. Shabir Ahmad Shah was attacked in Pampore and arrested twice in March. Mr. Shabir Shah escaped another assassination attempt on 8 March 1996. The house of Mir Waiz Umar Farooq, Chairman of the All Parties Hurriyat Conference, was attacked and ransacked by the Indian army on 9 March 1996. The political workers of APHC were beaten up. On April 11, two other APHC leaders, Mr. Abdul Ghani Lone and Syed Ali Shah Gilani, escaped attempts on their lives. Grenades exploded at the residences of the two leaders. Seven other people including a journalist and a human rights activist were killed by the Indian forces on the same day. After the explosions, the APHC leaders said that this was a conspiracy by the Indian Government "to eliminate the Hurriyat leadership";

(26) The military rule in Indian-occupied Kashmir has been perpetuated through the prolonged legislative imposition of "President's rule", i.e., direct political and military control by New Delhi. President's rule was once again "extended" on 19 January 1996. This further extension of Presidential rule will prolong the agony and suffering of the people of Kashmir. Yet, the answer to resolving the crisis in Kashmir lies neither in fake elections nor in arbitrary extensions of the Presidential rule, but in enabling the Kashmiris to exercise their right to self-determination;

(27) The suffering of the Kashmiri people is inadequately reported in the international media because of the restrictions imposed on the print and electronic media. BBC had declared IHK a war zone for its correspondents last year. CNN still stays away from Kashmir, for inexplicable reasons. In September 1995, an AFP stringer died in a bomb blast in Srinagar in his office and another journalist from BBC was seriously injured. In March 1996, a Kashmiri correspondent in Srinagar, Ghulam Nabi Khayal, was subjected to harassment and intimidation by agents of the Indian authorities. Mr. Ghulam Rasool Azad, Editor of *Rahmonia Kashmir*, was abducted by the Indian army on March 20. His body was found in river Jhelum on April 10, 1996. Indian agents control the content of the local publications;

(28) In view of the forgoing, the true representatives of the Kashmiri people reiterate the request they had made in September 1995 and urge the members of the OIC Contact Group

and, through them, the Human Rights Commission, the United Nations and the international community to prevail on India to accept the following:

(a) Withdraw its forces from the disputed State in accordance with the United Nations Security Council resolutions, and clear the obstacles in the way of holding a free and impartial plebiscite in Kashmir;

(b) Pending the total withdrawal of Indian forces and the holding of the plebiscite:

(i) Halt its repression of the civilian population in Kashmir;

(ii) Release all Kashmiris imprisoned in Jammu and Kashmir, as well as in India;

(iii) Ensure that the Indian security forces observe the norms of humanitarian law relating to armed conflicts and refrain from indulging in torture, custodial deaths, disappearances, arrests without warrants, and acts of humiliation against Kashmiri women;

(iv) Repeal urgently the emergency and other draconian laws or any substitutes thereof, which enable the Indian forces, agencies and authorities to violate human rights in Kashmir with impunity;

(v) Provide full and unrestricted access to Kashmir for all human rights organizations and relief agencies, including access to all imprisoned Kashmiris, political leaders and sites of reported massacres and violations of human rights;

(vi) Ensure provision of humanitarian assistance by the international humanitarian and relief agencies for those Kashmiris affected by Indian repression;

(vii) Urge India to allow an OIC fact-finding mission to Kashmir which should be able to objectively evaluate the situation on the ground.

(29) The true representatives of the Kashmiri people declare that:

(a) the people of Indian-held Kashmir will not participate in any elections held under Indian occupation;

(b) the people of Jammu and Kashmir shall continue the struggle for their freedom and the realization of their right to self-determination;

(c) the aspirations of the people of Jammu and Kashmir constitute the sole basis of the final disposition of the Jammu and Kashmir dispute;

(30) **The true representative of the Kashmiri people call on:**

(a) the Secretary-General of the Organization of the Islamic Conference to write to the United Nations Secretary-General to inform him about the grave security situation unfolding in Jammu and Kashmir, the sham of elections being organized by the Indian authorities in contravention of UN resolutions, and the new phase of repression unleashed by India in the name of elections;

(b) the Organization of the Islamic Conference to renew to the Government of India its offer of sending its fact finding and good offices missions to Jammu and Kashmir;

(c) request the UN Secretary General and the High Commissioner for Human rights to submit a report on the human rights violations in Jammu and Kashmir to the Commission of Human Rights, the Sub-Commission on Prevention of Discrimination and Protection of Minorities, and the General Assembly on the basis of the information obtained from all the relevant sources particularly the Kashmiri victims of Indian atrocities;

(d) the United Nations to hold a plebiscite in Jammu and Kashmir, without further delay, in accordance with the U.N. Security Council resolutions;

(e) the U.N. Secretary General to initiate a process of mediation to pave the way for the holding of a plebiscite in Jammu and Kashmir as laid down by the United Nations Security Council;

(f) the United Nations Secretary General to remind India that the proposed elections in Jammu and Kashmir are in contravention of Resolutions 91 and 122 of the UN Security Council which have clearly affirmed that "any action that (the Indian Government) may have taken or might attempt to take to determine the future shape and affiliation (of Jammu and Kashmir) would not constitute a disposition of the state" in terms of these resolutions;

(g) the U.N. Secretary General to inform the Security Council that India has escalated its repression in Indian-held Kashmir in order to impose fraudulent elections on the people of Jammu and Kashmir and thus deceive the world about its illegal occupation of Jammu and Kashmir. Such escalation will exacerbate tension in Jammu and Kashmir and between India and Pakistan and could prove a threat to regional and international peace and security;

(h) the United Nations Security Council to ask India to withdraw its army of occupation from Jammu and Kashmir;

(i) the Commission on Human Rights to condemn the massive violations of human rights in Jammu and Kashmir and appoint a Special Rapporteur on Jammu and Kashmir;

(j) the Commission on Human Rights to declare the following leaders of the APHC, who are under constant threat from the Indian occupation forces and their collaborators, as internationally protected persons:

(i) Mir Waiz Maulvi Umar Farooq,
(ii) Professor Abdul Ghani,
(iii) Shabir Ahmad Shah,
(iv) Abdul Ghani Lone,
(v) Syed Ali Gilani,
(vi) Maulana Abbas Ansari,
(vii) Muhammad Yasin Malik,

(k) the High Commissioner for Human Rights to ask India to stop massive violations of human rights in Jammu and Kashmir, this time in the name of elections;

(l) the international community to put pressure on India to give full access to international human rights organizations to visit Jammu and Kashmir.

(31) The Kashmiris feel that the above measures are a prerequisite for the creation of a conducive climate for a peaceful resolution of the Kashmir dispute in accordance with the wishes and aspirations of the people.